United Nations S/AC.37/2003/(1455)/16

Security Council

Distr.: General
17 April 2003

Original: English

Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 17 April 2003 from the Permanent Representative of Poland to the United Nations addressed to the Chairman of the Committee

In response to your letter dated 4 March 2003 (SCA/2/03(03)), on behalf of my Government I have the honour to submit herewith to the Security Council Committee established pursuant to resolution 1267 (1999) the report on the measures taken by the Republic of Poland to implement the measures imposed by paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002).

My Government stands ready to provide the Committee with further reports or information as necessary or if requested to do so by the Committee.

(*Signed*) Janusz **Stánczyk**
Ambassador
Permanent Representative

03-35270 (E) 220503

Annex to the letter dated 17 April 2003 from the Permanent Representative of Poland to the United Nations addressed to the Chairman of the Committee

Report to the Security Council Committee established pursuant to resolution 1267 (1999)

General observation:

Some information requested by the Security Council Committee established pursuant to resolution 1267 (1999) was submitted already to this Committee in Poland's previous report or in relevant reports submitted to the Counter Terrorism Committee (CTC), established pursuant to resolution 1373 (2001).

Where appropriate, this report refers to the above-mentioned information by indicating the specific reports, in which it was conveyed, as well as pointing out the excerpts thereof, which are contained in the appendix to the present report, in accordance with the guidance formulated by the Committee.

At the same time this report includes information on new developments in the area of the 1267 Committee's mandate.

With the view to facilitating the assessment of the information by the Committee, paragraphs used in this report refer to relevant questions contained in the guidance referred to above.

I. Introduction

1. No activities of persons and organisations described in the Guidance were detected or reported in the territory of Poland.

II. Consolidated list

2. The 1267 Committee's List, with all its updates is on a timely basis transmitted to relevant police, immigration control, customs and consular authorities and is being implemented within their respective competence on the basis of existing legal provisions and administrative arrangements.

3. No major problems were encountered in the implementation with regard to names and identifying information as currently included in the List. There were only indications, especially from financial authorities, that some verification or confirmation of the List is needed by the Minister of Foreign Affairs, who has been authorised by the Council of Ministers to act within the area of the implementation of the sanctions regime, in order to avoid possible suits of persons included in the List as to the legality of measures taken against them. The issue has been dealt with through internal consultations and this is no problem anymore.

4. No designated individuals or entities were identified inside Polish territory by Polish authorities.

5. Government of Poland does not possess any names of individuals that have not been included in the List.

6. No such lawsuit or legal proceedings against our activities have been brought in relation to the List.

7. No individual from the List has been identified as national or resident of Poland. There is no additional information about any new persons that are nationals or residents not included in the List.

8. Existing legal provisions and administrative arrangements, as well as legal sanctions, provide sufficient legal basis to prevent entities and individuals from recruiting or supporting Al.-Qaida members in carrying out activities in Poland and to prevent individuals from participating in Al -Qaida training. The appropriate excerpt of the Penal Code is attached.

III. Financial and economic assets freeze

9. The domestic legal basis to implement the asset freeze required by the resolutions 1267 (1999) and 1390 (2002) is the law of 22 September 2000 on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources and on counteracting financing of terrorism (as amended). The information on the implementation of that law is included in the First and Second Supplementary Reports of Poland to the Counter Terrorism Committee (see appropriate excerpts of these Reports attached herewith). Poland has also transmitted to the CTC portions of its legislation in English (both the amendments proposed by the Government and consolidated text of the appropriate law).

The said excerpts from the Reports of Poland to the CTC illustrate also how Poland arrived at the legal regulations in force in this area.

New developments:
The process of ratification of the International Convention for the Suppression of the Financing of Terrorism, 1999 is at its final stage. The law authorising the President of the Republic of Poland was adopted by the Parliament and it entered into force on 29 March 2003. Instruments of ratification have been submitted to the President for signature.

10. The central institution to deal with such problems is the General Inspector for Financial Information, who possesses the rank of the Under-Secretary of State (Vice Minister) in the Ministry of Finance, acting on the basis of the law of 22 September 2000 on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources and on counteracting financing of terrorism.

Its competence includes: obtaining, collecting, processing and analysing information in ways defined in the law as well as undertaking activities aimed at preventing the introduction to the financial trade of property values originating from illegal or undisclosed sources as well as preventing the financing of terrorism, and especially: analysing the course of transactions, which the General Inspector has been notified of in line with the principles defined in the applicable law, carrying out of the transaction suspension or the bank account suspension procedure, passing to the institution obliged of information about entities justifiably suspected of having connections with terrorist acts,

drawing up and handing over to appropriate authorities of documents justifying the crime suspicion, initiating and undertaking other activities aimed preventing the using of the Polish financial system to legalise revenue originating from illegal or undisclosed sources, including the training of the personnel of the institutions obliged with respect to tasks imposed on those institutions, controlling the compliance with the applicable law, co-operating with foreign institutions dealing with preventing the introduction to financial circulation of property values derived from illegal or undisclosed sources or preventing the financing of terrorism.

The said law introduces the notion cooperating institutions, which include prosecutor offices, institutions of financial supervision (in the sphere of banking, stock exchange, etc.). They co-operate with the Inspector on a national level.

The information connected with the introduction to the financial circulation of property values derived from illegal or undisclosed sources, as well as with the financing of terrorism may be made available by the General Inspector to foreign institutions on the basis of mutual favour in ways defined in bilateral agreements concluded by the General Inspector. Likewise, the Inspector is obtaining relevant information from its counterparts abroad, international organisations and institutions and foreign governments.

11. The details of the measures the banks are obliged to undertake are contained in the law referred to in paragraph 10 and more specifically in paragraph 14. In order to preserve concise nature of this Report, for more details see consolidated text of the law, which is available at CTC website.

12. No assets of persons or entities have been frozen. There were some investigations initiated in particular cases, but they did not prove to be connected in any way with terrorist activities. Poland informed on the said investigations in its First Supplementary Report to the CTC (see appropriate excerpt).

13. Consequently, no funds, financial assets or economic assets have been released.

14. The outline of the legal basis has been provided for in the appendix in relation with paragraph 9 of the present Report (the law mentioned there also applies to the movement of financial assets), as well as in paragraph 10.

The law mentioned in paragraph 10 introduces the concept of "obliged institutions". It includes: banks, branches of foreign banks, brokerage businesses, banks doing brokerage and other non-bank entities that do brokerage by virtue of the law; State Securities Deposit S.A. entities dealing with lottery games, betting and pinball games, insurance companies, central offices of foreign insurance companies, investment funds, investment fund associations, collective savings and credit banks, Polish Post, notaries public, residents maintaining foreign currency exchange businesses, entrepreneurs maintaining: auction houses, antique shops, conducting leasing and factoring activities, activity in the area of: trading noble and semi-noble metals and precious and semi-precious stones, second-hand sale, pawning or mediation in real-estate sales,

The obliged institution, accepting instruction or order from customer to make transaction whose equivalent exceeds EURO 15,000, shall register such a transaction, also in the event the transaction is made by way of more than one operation, whose circumstances indicate that the operations may be connected.

The said institution identifies customers when receiving instruction or order to make transaction based on documents presented at making instruction or order to perform

transaction or at concluding an agreement with the customer. The obliged institution shall record the data from identity document or passport, name, surname, citizenship and address of the person making the transaction as well as of the social security number in case of presenting the identity document or the country code in case of that person presenting passport.

If it follows from the circumstances of the transaction that the person performing it does not act in their own name, the institution obliged shall strive at identifying the entities in the name of which or for the benefit of which the person making the transaction is acting.

The institution shall, within 30 days from the date of the commencement of its activity, submit to the General Inspector a written notification about its activity containing the name (the company name) or the name and surname, the registered offices, the address, the REGON number (the company statistical number) and the definition of the type of the activity conducted.

The institution obliged makes available the information relating to transactions coming under the regulations of the act immediately, also on the written request of the General Inspector. Such availability consists particularly in handing over information about the parties involved in the transaction, the contents of the documents, including documents concerning the balances and the transactions made within an account, handing over certified copies of the above documents or making particular documents available for viewing by the authorised employees of the unit mentioned in Art. 3, Item 4 in order to make notes or copies.

Information about transactions shall contain in particular the following data: date and place of transaction, name, surname, citizenship, address, social security number or country code as well as features of the document based on which the person making the transaction has been identified, amount, currency and type of transaction, number of the account used to make the transaction as well as data concerning the owner or the disposer of that account, data of the natural person, the legal person or the organisational unit without legal identity on behalf of which the transaction has been made, name, surname or company name and address of the transaction's payee, justification in the case of handing over transactions.

The law introduces criminal sanctions (imprisonment up to 3 years) for those who acting on behalf or in the interest of the institution obliged, who does not fulfil the following obligations: to register transactions or to keep transaction registers and documents relating to transactions, to identify the customer in accordance with procedures established in the law, or to store information subject to identification, to notify the financial information body about transaction or about maintaining an account for the particular person, to suspend the transaction or to block the account,

Moreover, anyone acting on behalf of or in the interest of the institution obliged, who, in contravention with the law, discloses information collected based on the authorisation issuing from the present Law to unauthorised persons, account owners or persons the transaction relates to or who uses that information in ways conflicting with the provisions of the present Law, shall be subject to the same punishment.

As to the issues mentioned in 14, fifth subparagraph ("hawala"-type systems and charitable organisations – see appropriate excerpts from the First and Second Supplementary Reports to the CTC.

New development:

The officers of the Bureau of the General Inspector for Financial Information participate in regular training organised by FATF, which is focused mainly on the said phenomena.

IV. Travel ban

15. This is regulated by the law of 25 June 1997 on aliens. Article 13 par. 1 (4) of that law stipulates that alien may be refused visa or entry in the territory of the Republic of Poland if that there is reasonable suspicion that the alien engages in terrorist activity, participates in such an activity, organises it or is member of terrorist organisation. Additionally Article 13 par. 1 (5) stipulates that an alien may be also refused visa and entry if there is a reasonable suspicion that he carries through the border, without required permission, arms, munitions, explosive materials, radioactive materials or drugs or psychotropic substances, participates in such an activity, organises it or is member of an organisation engaged in such an activity.

An alien may also be denied entry to Poland if his entry or stay is undesired due to the obligations resulting from the provisions of ratified international treaties to which Poland is party (par. 1 (8)) or if he is undesired due to other threat to national security and defence or due to the need to protect public order.

The Chairman of the Office for Repatriation and Aliens is, on the basis of the said law, the competent authority to maintain the list of undesired persons. The list, which is updated on a timely basis, is transferred to the diplomatic missions and consular offices of Poland abroad. Every visa application is verified with the list and undesired persons will be denied visa or permit for entry. The co-operation between competent authorities ensures strict implementation of requirements of the resolution in this matter.

For the same reasons, on the basis of Article 52 par. 1 4) the alien may be expelled from the territory of Poland, on the basis of administrative decision issued by competent authority.

New developments:

Poland is preparing for the incorporation of its database on aliens in the Schengen Information System (SIS). As from the membership of Poland in the European Union there will be a special national segment in the SIS, integrated with other Member States.

16. The names of the listed individuals have been included in the "stop list" and border checkpoint list.

17. Whenever new List is communicated to the Polish Government it is immediately sent to competent authorities for implementation. Very frequently information on suspected persons is obtained from other sources as there are arrangements for direct co-operation between competent ministries and border control authorities with several, especially neighbouring countries. Polish authorities possess capability to search the List and other database using electronic means at all entry points.

18. None of the listed individual has been stopped at Polish border points or while transiting Polish territory.

19. The List has been incorporated in the reference base of the Polish consular offices abroad on the basis of the information obtained from the Ministry of Foreign Affairs and the Ministry of the Interior. In case such person appears before consular officer there is

requirement to report such case to the Ministry. According to visa issuing authorities there were no individuals, whose names appear on the List among visa applicants.

V. Arms embargo

20. For measures in place to tackle the problems mentioned in paragraphs 20, 21 and 22 of the Guidance- see appropriate excerpt from the First Supplementary Report to the CTC as well as Information on practical implementation of such measures attached *in extenso* as provided for with the initial Report to the CTC.

21. See paragraph 20.

22. See paragraph 20.

23. For measures in place to tackle the problems mentioned in paragraph 23 of the Guidance- see appropriate excerpt from the Supplementary Report to the CTC.

VI. Assistance and conclusion

24. Poland has always been ready to share its expertise with other countries if such a need arises. The most effective way is to do so through direct working contacts between focal points responsible for combating terrorism. Within such an exchange of expertise Polish Ministry of Foreign Affairs has been approached several times by the representatives of the countries in the region and these contacts are maintained.

    The possibility of expanding our assistance is under consideration.

25. As it was shown, especially in the Reports to the CTC, implementation of financial sanctions regime posed some problem to the Polish administration. Since its establishment General Inspector for Financial Information is co-operating with appropriate international organisations and institutions and other governments to develop qualifications and skills of its staff. It also should be noted that many activities related to the capacity building has been done also in connection with the preparation of Poland for the membership in the European Union.

    Along the implementation of specific laws in Poland we will signal to the Committee specific needs for further assistance.

26. The Government of Poland stands ready to provide the Committee with any additional and detailed information or explanation in relation with this Report, if need arises.

Appendix

Ad. 8

Art. 258. § 1. A person who participates in organised group or association, which aim is to commit crimes shall be sentenced to imprisonment for up to 3 years.

§ 2. If the group or association referred to in § 1 is of military nature the perpetrator shall be sentenced to imprisonment for 3 months up to 5 years.

§ 3. A person who establishes the group or association referred to in § 1 or 2 or manages such a group or association shall be sentenced to imprisonment from 6 months up to 8 years."

Ad. 9, first subparagraph

(from the First Supplementary Report)

"Sub-paragraph 1 (a)

- **Please could Poland outline in more detail the relevant portions of the laws mentioned in the first paragraph of the section of the report referring to this Sub-paragraph.**

The problem of suppression of the financing of terrorism has become one of the most important in light of the operative provisions of the resolution 1373 (2001). In order to ensure full and comprehensive implementation of the provisions of that resolution relating to financial measures, the Government of Poland has submitted to the Lower House of the Parliament in March 2002 the draft law amending the law of 16 November 2000 on counteracting introduction to financial circulation of property values derived from illegal or undisclosed sources. Translation of the draft law into English is attached to this Information.

The most important amendments connected with the counteracting to the financing of terrorism include:

1) proposal to add in Article 2 items 6 and 7, facilitating to the General Inspector for Financial Information blockade of accounts and definition of the term "terrorist act", in the following wording:

- '6) account blockade – is understood as a temporary hindrance in controlling or using all property values collected on an account, including by the institution obliged,

- 7) a terrorist act – is understood as a crime against peace, humanity and war crimes, crimes violating the general safety and crimes defined in Articles 134 and 136 of the Penal Code,"

It should be noted that the notion of „account blockade" is by its nature identical with „freezing of account" used in resolution 1373 (2001) and other relevant Security Council resolutions

2) proposal to add after Article 16 a new Article 16a, which relates to the transfer by the General Inspector for Financial Information to obliged institutions communications on persons, suspected of assisting or participating in the

perpetration of terrorist acts. This Article facilitates the initiation of procedure of blockade of financial means on the account. It has the following wording:

"Art. 16a.1. The General Inspector, on the basis of the information held, shall hand over to the institution obliged information about entities justifiably suspected of having connections with terrorist acts.

2. The institution obliged shall immediately notify the General Inspector about the fact of maintaining an account of an entity mentioned in item 1 as well as of transactions in which that entity appears as a party.'"

3) proposal to modify Article 3 section 5 concerning exchange of information between General Inspector for Financial Information and his foreign equivalents, which aims at improving the performance of tasks imposed on Inspector by the law. The proposed Article has the following wording:

'5. The information connected with the introduction to the financial circulation of property values derived from illegal or undisclosed sources, as well as with the financing of terrorism may be made available by the General Inspector to foreign institutions mentioned in Article 4, point 7 on the basis of mutual favour in ways defined in bilateral agreements concluded by the General Inspector.',

4) Modification of the title of the law. If accepted by the Parliament it would read as follows: "on counteracting introduction to financial circulation of property values derived from illegal or undisclosed sources and on counteracting financing terrorism".

Complemented by the said proposed amendments the law, which scope and application was described in general terms in the Report of Poland submitted to the CTC on 21 December 2001 will become solid basis for smooth and effective implementation of financial restrictions."

(from the Second Supplementary Report)

"Paragraph 1.3

The law amending the law of 16 November 2000 on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources was passed by the Parliament on 27 September 2002. It entered into force on 29 November 2002.

In accordance with the amendment the current title of the law is: "on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources and on counteracting financing of terrorism". The copy of translation of the uniform text of the law is attached to the present Report. Some expressions used in the translation may differ from the terminology used in the previous Reports submitted by Poland. Nonetheless, the attached text could serve as a reference for future consideration by the CTC. Unfortunately, this translation is not available in electronic form yet. The last three articles of that law are transitional ones, incorporated from the amending law.

Paragraph 1.4.

Before the entry into force of the amendments to the law referred to in paragraph 1.3, the competencies, which are now with the General Inspector of Financial Information, were discharged by Prosecutor's offices or State Protection Office (not "Prosecution Office" as it is stated in the CTC's comments) on the basis of

the Penal Proceedings Code. The said institutions are vested with investigation competencies, both in relation with ordinary crimes, as well as those threatening the security of the state.

Since the amendment of the Law of 16 November 2000 is already in force, the Government wishes to confirm that all the mechanisms pointed out by the CTC (namely the freezing of assets, investigation and the initiation of proceedings – distinct from seizure or forfeiture on conviction) are provided in the amendment and are in force already."

Ad. 14, fifth subparagraph

(from the First Supplementary Report)

"In accordance with Article 18 (3) of the Penal Code, whoever, with an intent that another person should commit a prohibited act, facilitates by his behaviour the commission of the act, particularly by providing the instrument, means of transport, or giving counsel or information, shall be liable for aiding and abetting. Furthermore, whoever, acting against a particular legal duty of preventing the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.

In accordance with Article 19 (1) of the Penal Code the court will decide on penalty for aiding within the limits provided for the perpetration.

Taking into account the foregoing, the Polish legal system allows for prosecution and punishment of individual financing the perpetrator of a crime. It relates both to persons acting individually and persons committing actions in the institutions carrying out public activity."

(from the Second Supplementary Report)

The charitable activities may be carried out by rather broad spectrum of institutions. These may include associations, foundations, religious bodies, etc. Hence, the requirements relating to the registration of such bodies are contained in various legal acts, e.g. Law on associations of 7 April 1989, Law on foundations of 6 April 1984, as well as in laws concerning churches and religious unions or agreements concluded between the Government and such religious institutions. As to the requirements of registration, financial and property requirements the provisions of the Law on associations will apply to the latter accordingly.

Law on associations contains general requirements related to the registration. These requirements are similar in the cases of other bodies. The association is subject to the entry into National Court Register. The register court, after the consideration of the request for registration, issues a decision on registration of the association when it founds that its statute is consistent with the legal provisions and the founders meet the requirements provided for in the Law.

The surveillance over the associations is carried out by representative of the Government in the *województwo* (province) being the unit of administrative division of Poland – in case of associations of units of territorial self-government or by head of regional administration – in case of other associations, competent for the registered office of particular association. The important is that the provisions of the Law do not prejudice rights and competencies of prosecutors resulting from other laws.

In case of foundations, they may indicate minister competent for the purposes of that foundation, who may discharge the functions of surveillance organ.

The court, upon request of surveillance organ or prosecutor may, as one of the measures, dissolve the association, if its activity shows gross or repeated breach of the law or provisions of its statute. Prosecutor may institute ordinary proceedings, within its competence related to the breaches of law, committed by the association.

Right of association, which is enshrined in the Constitution, may be subject to limitations introduced only by law, which are required for the assurance of interests of national security or public order as well as protection of health or public morality or protection of rights and freedoms of other persons.

The law applies to aliens as well. The aliens having residence in the territory of the Republic of Poland may associate in accordance with the provisions applicable to Polish citizens. The aliens, who do not have residence in Poland may integrate associations, if their statutes envisage such a possibility."

Ad. 12.

"The examined cases related above all to criminal terrorism with domestic nature. No procedural material indicating connections of organised criminal groups or individuals with international terrorist groups or international terrorism were found.

In one case concerning the intent to introduce to the trade of considerable amount of financial means the initiated investigation has been suspended, pending the response from the Federal Republic of Germany. It followed from the notice of one of the banks directed to the General Inspector for Financial Information (on the basis of article 16 of the Law of 16 November on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources) that on the day of the said notice a customer appeared in the bank, who offered the sale of 380.000.000 Kuwaiti dinars at a very lowered exchange rate. He explained that exchange rate by uncertain economic situation of Arab states after terrorist attacks in the USA. He acted as a representative of a company with registered place of business in Germany. The currency had to be transferred to the Polish bank and thereafter to an account in Germany. The said individual also offered the repurchase of that bank of 300 cheques at 2000 USD each issued by one of the banks in the United States. The transaction has not been finalised due to refuse by the bank of the said offers."

Ad 20, 21 and 22

(from the First Supplementary Report to the CTC)

"The report on practical administration of the law of 29 November 2000 on the control of external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security has been already provided to the CTC as Appendix 2 to the Report of 21 December 2001. Since the time of submission of the report no new circumstances or modifications occured.

The obligation to adopt the Law of 22 June 2001 on the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) followed from the Convention itself, as a national measure to implement it. Non-proliferation of weapons of mass destruction, including chemical weapons remains important priority of the foreign policy of Poland. As a member of Anti-Terrorist Coalition Poland attaches great

importance to the Convention and its verification organ – Organisation for the Prohibition of Chemical Weapons (OPCW) in the Hague.

On the basis of the Law (following Article VI of CWC annual declarations are submitted by National Authority, which is Minister for Foreign Affairs to the OPCW. National limits for the production of toxic substances have been established and process of destruction of chemical weapons has been finalised.

The cooperation between competent organs, determined in the Law, with National Authority playing central role in this system, guarantees full and strict implementation of CWC. The Law established a system of verification and control, cooperation with chemical industry, control of exportation and importation, conditions of declarations, cooperation with customs institutions and other control organs, exchange of information between the Secretariat of the OPCW and National Authority, implementation of the CWC in the chemical industry. This system is adjusted to other legal provisions in force in Poland in the sphere of control of trade.

There exist in Poland legal means and other arrangements in force for counteracting international terrorism in the sphere of nuclear materials (National Atomic Energy Agency is responsible institution in this regard) The most important act is the Regulation of the Council of Ministers of 31 July 2001 on Physical Protection of Nuclear Materials - pursuant to obligations under the Convention of Physical Protection of Nuclear Materials (open for signature in 1980 and ratified by Poland on 3.03.1989) and to requirements for a State System for physical protection of nuclear materials defined in the recommendation INFCIRC/225 rev.4 of the International Atomic Energy Agency The Regulation requires from users of nuclear materials that they shall be protected according to principles of the IAEA.

Since 11 September 2001 more stringent procedures of physical protection have been implemented in the facilities of the Institute of Atomic Energy.

Poland is bound by:

1. Treaty on the Non-Proliferation of Nuclear Weapons ratified on 8 March 1972.
2. Agreement between Poland and the International Atomic Energy Agency for the application of Safeguards in Connection with the Treaty on the Non-proliferation of Nuclear Weapons - INFCIRC 179 (based on the IAEA INFCIRC/153) which entered into force on 11 of October 1972. This document establishes the rules for nuclear safeguards in Poland.
3. Atomic Law of 29 November 2000 with further amendments. The Law requires that activities involving use of radioactive materials shall be licensed and requires physical protection of nuclear materials.
4. Regulation of Council of Ministers of 31 July 2001 on Nuclear Materials Accountancy pursuant to obligations contained in the Agreement on Safeguards between Poland an the IAEA, ratified in 1972. The Agreement embodies main obligation under Non-proliferation Treaty concerning nuclear materials. The Regulation requires from users strict accounting for quantities and types of nuclear materials in use and admitting inspections according to requirements of the accountancy system of the International Atomic Energy Agency.
5. Additional Protocol to the Agreement on Safeguards between Poland and the IAEA (see No. 2 above) - as the INFCIRC 179 Add.1, which was ratified on 5 May 2000.

The Protocol institutes system of declarations and inspections for entities where activities having some relevance for nuclear cycle are carried. Declarations concern e.g. export of equipment and non-nuclear material listed in Annex II.

The Non-proliferation Section of the NAEA hosts a Point of Contact for voluntary exchange of information with the data base of the IAEA on cases of illegal transporting of nuclear and radioactive materials.

To combat illegal handling radioactive and nuclear materials a complex of activities is carried:

a. prevention (regulations concerning i.e. export control of strategic goods),
b. detection (measurement instruments at border check points),
c. training for officers of Border Guards and custom officers,
d. Co-operation with other state services (Police, Customs and other)."

Ad 23.

(From the Second Supplementary Report to CTC)

"Internally, the controls applicable to the acquisition and use within Poland of firearms and explosives are regulated by laws and executive regulations thereto. These provisions are consistent with the European legislation.

Firearms

The Law of 21 May 1999 on arms and munitions determines detailed principles of issuance and withdrawal of permits for arms, acquisition, storage, disposal and deposition of arms and munitions, transport through the national territory as well as importation from and exportation abroad of arms and munitions, as well as principles governing the possession of arms and munitions by aliens.

The acquisition and possession of firearms is subject to special permit issued by competent Police organ. The Law specifies cases where permits cannot be issued to persons who do not meet specific requirements or infringed conditions and obligations set forth in the Law. The same conditions apply to the withdrawal of permits. Firearms should be registered and the owner has to have special document confirming possession of arms The provisions of the Law apply to aliens accordingly.

There are specific provisions in the Law related to possession of arms and munitions in case of members of diplomatic missions and consular offices, other persons with equal status, who can possess arms and munitions on the basis of international agreements or the principle of mutuality. In this case the possession of arms is subject to temporary permit issued by competent Police organ. The Law contains penal sanctions and provisions on seizure of arms and munitions.

There are executive regulations to that Law, which relate inter alia to: types of especially dangerous arms and munitions in case of which permit may be issued; medical and psychological examination of persons who apply for or possess permit; model declaration of importation from abroad of arms and munitions and procedure for transmission of information to the Police on importation of arms and munitions by customs services; procedure and conditions for the issuance of permits for arms to the members of diplomatic missions and consular offices and persons having equal status; detailed principles of deposition of arms and munitions; model required documents, etc.

There are separate legal provisions relating to the possession and use of firearms and explosives by state bodies and their officers responsible for the maintenance of national security and public order as well as Armed Forces.

Explosives

The Law of 21 June 2002 on explosives for civilian use determines principles of issuance and withdrawal of permits for acquisition and storage of explosives, basic requirements in relation with explosives introduced to trade, principles of governing the transport of explosives and its control, conformity assessment procedures and marking of explosives.

Acquisition and storage of explosives for civilian use requires permit, issued by chief of provincial administration (representative of the Government in the province), competent for the registered office of the requesting person. The Law specifies the information required for the issuance of permit, conditions to be met by these persons to obtain the permit as well as the cases when the permit should be denied or withdrawn. Transport and transit of explosives requires consent of the Minister for Economy, Labour and Social Protection.

There are executive regulations to that Law, which determine inter alia: requirements of training and examination of persons, who have access to explosives, model register of explosives, model request for permit.

There are separate legal provisions relating to the possession and use of firearms and explosives by state bodies and their officers responsible for the maintenance of national security and public order as well as Armed Forces.

Provisions common to firearms and explosives

The provisions concerning the principles of economic activity relating to the manufacturing and trade with explosives, arms, munitions and products and technologies of military and police purposes are contained in the Law of 22 June 2001. Executive regulations to that Law specify: conditions of sale of , scope and manner of verification of consistency with these requirements, requirements as to quality assessment, registration of these sensitive materials, and principles of management in terms of environmental protection and protection of human life and health."

Information concerning the control of external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security

(text in extenso from the initial Report – Annex 2)

1. Introduction

Poland belongs to a majority of states which have set their plans for economic growth on the foundation of external trade.

However, the growing volume of international trade exchange fuels fears of strategically sensitive goods, dual-use technologies, arms and military equipment falling into the wrong hands. Which highlights the need for continuous, meticulous and efficient control of the flow of trade with foreign countries.

There are a host of reasons why so many states exercise control of their external trade in strategic goods and technologies, prominent among them being:

- national security, delivered by preventing proliferation of mass destruction weapons,
- pursuit of long-term international policy objectives,
- the need to keep international obligations,
- ensuring national enterprises' access to state-of-the-art technologies.

This also explains why so many international firms have decided to put in place their own internal control systems.

An expanding, external trade-led Polish economy rules out the prospect of each and every transaction being administered by the government. This would trigger the growth of procedures and mechanisms which would effectively strait-jacket the control system. This, in turn, would slow down, or even impose constraints upon, economic growth.

It is certainly much easier to strike a balance between the interests of the state and those of company operators when the latter can understand with crystal clarity the significance of both foreign trade control and the rules governing it.

That is why in modifying the export control system which had existed till the end of 2000, the Ministry of Economy has applied its guiding principle whereby enterprise owners' freedom to go ahead with their external trade contracts is contingent upon their obligation to deploy their own internal control systems.

It goes without saying that it is the manufacturers of and dealers in goods and technologies involved in external trade that have the most extensive knowledge of their application and potential users. Which is another reason why Polish firms are so important players in the country's external trade control system, their respective in-house control systems being crucial in preventing transfers of strategically sensitive goods to wrong users.

An in-house control system is also in the interest of the Polish business community, because:

- it safeguards a Polish firm against an inadvertent failure to comply with the regulations which would render it liable to economic sanctions and a fine,
- it can be a circumstance encouraging a lenient treatment of a Polish company (and its board) should it be found in breach of export control regulations,

- its absence can affect business contacts with foreign entities, should the latter insist on adherence to trade control principles.

The system being proposed to Polish company operators is fully consistent with international standards, is structured in keeping therewith and uses the identical terminology.

The concept of internal control system has been prompted by cooperation of the business community and government institutions aimed at preventing stockpiling of arms and dual-use goods and technologies which could pose a threat to international peace and security.

The deployment in a Polish firm of an in-house control system is as important for the firm concerned as it is for the whole country.

In Poland, the control of external trade in strategic goods is regulated by the 29 November 2000 Law on external trade in goods, technologies and services of strategic importance for state security, as well as for international peace and security.

2. Application of international solutions relevant to control of trade in dual-use goods and technologies, as well as arms

More than 30 of the world's most advanced nations are parties to the international system of control of trade in arms, as well as dual-use goods and technologies, hammered out by international non-proliferation organisations and control regimes.

Poland is a member of all non-proliferation organisations and groupings and has ratified all relevant international conventions and treaties.

We cooperate with parties to the said agreements and regimes with the aim of furthering regional and international security and stability through enhanced transparency and responsibility in handling transfers of conventional weapons and dual-use goods and technologies.

The said cooperation is focused primarily on:

- countering the growth of the military capabilities of states posing a threat to international security,
- blocking the proliferation of mass-destruction and conventional weapons, as well as technologies serving development of both,
- imposing constraints on trade prejudicial to certain institutions and organisations based in countries covered by total or partial embargoes of the United Nations Organisation and the European Union,
- bringing to a halt trade exchange with states fighting wars and supporting international terrorism,
- pursuit of joint operations targeting recognised or suspected terrorist organisations.

Poland's membership of NATO today, and of the European Union in the near future, has prompted modifications of legal regulations, mechanisms and procedures relevant to its external trade in armaments and military equipment, as well as dual-use goods and technologies.

On 1 January 2001 a law came into force regulating the country's external trade in goods, technologies and services of strategic consequence for its security, as well as for the keeping of international peace and security.

The law incorporates mechanisms ensuring implementation of the European Union Code of Conduct in Arms Export which in June 1998 won approval from the EU's General Affairs Council.

The assumption behind the new legal regulations is that - like in EU member states and NATO - the control in Poland of external trade in arms and dual-use goods is the resultant of business people interacting very closely with the government administration. The idea of Poland's external trade control system is underpinned by the concept of industrial enterprises, trade companies and research and development centres running their own, in-house control systems. Control on the ground must be organised by Polish manufacturers, exporters, users, research and development centres, etc., manufacturing, using and exporting dual-use goods and technologies, military equipment and armaments subject to international control. Control must also be exercised by brokers, dispatchers, hauliers, operators of cargo-handling plants and trade consultants on their own turf.

The track-record of mature trade control systems highlights both the motivation of manufacturers or exporters willing to succumb to control procedures, and the two-way flow of information which between them pave the way to confidence and cooperation between the government administration, business people and scientists. The aim of such cooperation is to deploy control mechanisms and procedures which - adding up to a control system meeting international standards - will not constrain the Polish business people's operating freedom above the necessary minimum, and will not put them at a disadvantage vis-a-vis their foreign partners.

It has become necessary for Poland to embrace NATO and EU rules governing control of trade in dual-use commodities and technologies, because external trade control is moving away from being an internal affair of individual states, and towards becoming the principal common foreign policy pillar upholding international peace and the security of both NATO and EU member states.

3. Regulations enshrined in Polish law

The law regulating Poland's external trade in goods, technologies and services of strategic consequence for its security, as well as for the keeping of international peace and security, encapsulates experience accumulated by Poland over the years. It also incorporates some earlier legal regulations which have been applied with positive results. These include procedures governing the issuance of licences, their withdrawal and change, the institution of international import certificate, delivery verification certificate, the end user's statement and turnover control. Due attention has further been given therein to key elements of external trade control in dual-use goods and technologies, as well as armaments, applied across European Union member states and NATO. In sum, the law:

- introduces general and global licences covering export, import or transit of goods or technologies subject to control,
- extends control to commodities which do not figure on control lists if there is no certainty about their end use,
- ushers in control of trade in "elusive" technologies, i.e. which can be transmitted by way of computers, fax machines and telephones, or conveyed during training courses,
- makes possible involvement of a company in the exercise of control of external trade in strategic goods,
- lays the groundwork for development of partnership and cooperation of business operators with government administration.

The law says that the ban on external trade in strategic goods and services remains in force unless a business operator has complied with all the terms and restrictions laid down in the said law, in other laws, as well as international agreements and arrangements. In other words, an export, import or transit licence, or one covering services issued by the Ministry of Economy is a privilege bestowed on a business owner who has complied with all the relevant terms and conditions established by law and laid down in international agreements and arrangements. Such a privilege – which takes the form of a licence – can be withdrawn or changed, or else, the enterprise owner may be denied it at all.

The new, modified concept of external trade control draws its strength from internal control and turnover management systems existing in each and every enterprise trading in strategic goods. Mechanisms ensuring correct order delivery-related decision-making and suitable verification thereof,
are vital components of such systems.

4. Export control

Pursuant to the aforesaid law, the Ministry of Economy demands that a Polish business owner submit an end-user's international import certificate or end statement, confirmed by the relevant government authorities of a foreign importer.

The end-user's statement is issued by a foreign end-user, and its contents must meet the requirements of the Ministry of Economy. This statement, too, has to bear a confirmation of both a foreign importer and the authorities of a country of destination.

The document in question is used in all export transactions with the aim of transferring responsibility on to foreign trading partners and their authorities, as well as safeguarding goods against being forwarded to unauthorised destinations.

The statement shall:
- name the country of destination,
- furnish the name and address of the end user,
- give a description of the strategic commodity, its quantity and value,
- name intermediate recipients and buyers,
- contain an undertaking not to pass the strategic commodity in question on to any other recipient without a prior consent of Polish trade control agencies. It should further contain an undertaking to the effect that a foreign end-user and importer shall not:
- re-export,
- sell,
- lend to any entity,
- or in any other way dispose of the goods/technologies named in the statement outside the end-user's country, without a prior consent of the Government of the Republic of Poland.

This undertaking also covers spare parts, specialist equipment, documentation and instructions needed for post-sale maintenance and servicing.

The undertakings to be entered at the Ministry of Economy's request into an end-user's statement, a foreign importer's statement and a confirmation issued by the government administration of an end-user's country, allow to cede all responsibility to foreign authorities and reduce to a minimum the danger of a shipment of goods ending up at the address of an unauthorised user.

5.Import control

The Ministry of the Economy can, pursuant to the 29 November 2000 law, issue an import certificate, or confirm the statement of an end user, only when the authorities of a foreign importer's country so require.

The law further stipulates that the international import certificate and the end-user's statement are documents meant to be submitted to the appropriate authorities beyond Poland's borders. They testify to the Polish importer's credibility and to his being subject to the relevant agencies' control of his transactions involving import to Poland of strategic goods. The Ministry of Economy can refuse to issue an import certificate or deny a confirmation to an end-user's statement if it cannot obtain a confirmation of control being exercised over imports to Poland, or there is no guarantee that trade in strategic goods will be conducted in keeping with the provisions of the law.

6. Control of trade in goods which do not figure on control lists

Polish legal regulations make a business operator duty-bound to apply for an export licence, or a licence to broker exports of goods not entered in the lists of strategic goods, but the handling of which requires a licence, if he knows or has a legitimate reason to surmise that:

- the goods or services he is about to export can be utilised – in toto or partly – for breaking or suppressing human rights and basic freedoms,
- his delivery of goods will pose a threat to peace or will in some other way contribute to upsetting the stability of the region,
- the final-destination country supports terrorism, makes it easier for terrorists to operate or encourages terrorism or international crime,
- the goods he is about to export can be used in a manner other than to meet the receiving nation's legitimate defence and security-related needs.

7. Transit control

Under the above-mentioned law, the transiting of a dual-use commodity which has originated in a foreign country requires a licence. The latter is issued by the director of a border customs office at the request of a haulier.

Licences for indirect transit are issued by the Ministry of Economy. Indirect transit consists in transport of armaments and dual-use goods and technologies across the Polish customs area, as well as transshipment thereof, say, in a seaport.

Export, import or transit of strategic goods must be handled solely by specially designated customs offices.

8. Issuance of licences

Administrative decisions preceding the licencing of external trade in strategic goods are also elements of control. Licences are issued by the Ministry of Economy and cover:

- export, import and transit of dual application goods and technologies, as well as arms and military equipment,
- gifts, lending and leasing of the said goods,
- dispatching, transport and loading services.

- brokerage, trade consulting and assistance in concluding contracts involving trade in strategic goods.

At present, only individual licences are issued for export, import and transit of arms and military equipment, or services associated therewith. They name a commodity or a service associated therewith and the country with which an operator is thus allowed to trade.

Under the 29 November 2000 law, after three years the Ministry of Economy will also start issuing:

- general licences, covering a type or category of dual-use goods and indicating one or more countries a licence holder is thereby allowed to trade with,
- global licences, covering a type or a category of dual-use goods, without actually naming countries that can be traded with in the said goods.

Apart from the aforesaid licences, the Ministry of Economy also issues international import certificates and approve end-users' statements.

9. Other government institutions involved in control and licencing processes

The Ministry of Economy issues an individual licence after seeking an opinion on the matter of the relevant institution and becoming satisfied that the applicant has met all the conditions laid down in the law of the land.

Under the 29 November law, institutions authorised to deliver opinions are:

- the Minister of Foreign Affairs,
- the Minister of National Defence,
- the Finance Minister,
- the Minister of Internal Affairs,
- the Head of the State Protection Office,
- the President of the State Agency for Nuclear Research,
- the President of the Main Customs Office,
- the General Customs Inspector.

No licence can be issued without opinions given by the above institutions.

10. Licences denied, revoked and altered

The Ministry of Economy refuses, on the strength of an administrative decision, to issue an export, import or transit licence, or one covering the services associated with the trade in question, if:

- the pursuit of such trade would be in breach of obligations assumed by the Republic of Poland under international agreements,
- the issuance of the licence would prejudice the interests of the foreign policy of the Republic of Poland,
- such a decision is called for by national defence or security-related considerations,
- such a decision is called for by important economic interests of the Republic of Poland,

- the applicant enterprise owner does not make any warranty as to the lawful conduct of his operations.

The Ministry of Economy refuses to licence trade in strategic goods if it suspects that all or part of the latter can be utilised illegally, or in a manner prejudicial to the interests of the Republic of Poland, for implementation, production, exploitation, operation, maintenance, storage, detection, identification or proliferation of mass destruction weapons, notably of chemical, biological or nuclear weapons, as well as for the implementation, production, maintenance and storage of delivery systems for such weapons.

The Ministry can deny a licence to anyone if it fears:

- there is a risk the end use or destination of strategic goods can be changed,
- the applicant business operator has been in breach of regulations governing trade in strategic goods.

Having heard the opinions of the aforesaid institutions, the Ministry of Economy can at any time, on the strength of an administrative decision, revoke or alter a licence already issued to an individual operator if at least one of the circumstances mentioned above has come into play, or the operator acts in contravention of the terms laid down in the licence.

11. Control lists

The currently binding list of strategic goods was adopted in July 2001. It was published as an annexe to a decree of the Minister of Economy. It replaced the previous one of August 1998.

The list features arms and military equipment, as well as dual-use goods and technologies subject to external trade control.

The Polish control lists (the list of dual-use goods and technologies and the armaments list) are faithful translations of EU control lists, their contents strictly adhering to the catalogue of items controlled within the European Union.

12. The internal control system

Pursuant to the 29 November 2000 law, before he files an application for an individual licence, the enterprise owner is under the obligation to check whether:
- the end-user intends to use the armaments for breaking or suppressing human rights and fundamental freedoms,
- the arms he is about to deliver will raise a threat to peace or in some other way will contribute to upsetting the region's stability,
- the country of ultimate destination supports, facilitates or encourages terrorism or international crime,
- the arms to be exported can be used for a purpose other than meeting the legitimate defence and security-related needs of the receiving state.

To comply with the above requirements, the contractor is duty-bound to create and apply an in-house system of control and management of trade in strategic goods to help him run each and every transaction, with properties peculiar thereto and obligatory legal regulations duly observed.

Seen from the perspective of management, an in-house control system is an instrument safeguarding a company against actions incompatible with national trade control requirements and relevant international arrangements.

Fitted with their own, internal control systems, Polish firms will be able to protect both their commercial interests and their respective images internationally.

In September 2001 the Ministry of Economy supplied the business community involved in external trade in strategic goods with a programme on CDs containing information needed for the deployment of in-house control systems. The programme is consistent with the norms of the ISO 9000 series and additional requirements approved of by the Ministry. It features the following elements of an in-house control system to be incorporated by the recipients of the CDs in their respective systems:

- a corporate policy statement,
- personnel selection,
- data storage,
- training,
- order realisation procedures,
- notification,
- analysis of the rejected applications list,
- product classification,
- analysis of risks raised by product destination change,
- in-house control,
- system certification.

The Ministry has launched training sessions for companies in programme application and in-house control systems.

13. Monitoring and control of firms involved in external trade in strategic goods

In May 2001 the Ministry of Economy received from the Government of the United States a gift of the TRACKER system, consisting of computer equipment, complete with a programme imparting automation to licencing procedures. The system is applicable to external trade in goods, technologies and services of strategic importance for state security. It is also used for the maintenance of international peace and security. It can:

- store and process a much larger volume of data,
- run an automatic archive of both the consecutive phases of consultation and opinions given,
- analyse in-depth both decision-making processes and information pertaining to goods, technologies, services, applicants and other parties to a contract,
- prepare export, import, transit and service licences,
- prepare certificates,
- impart greater efficiency to export, import and transit control.

The TRACKER system definitely improves the efficiency of the decision-making process, the latter requiring, among other things:

- that several control lists of goods and technologies be used, and that diverse modes of conduct worked out within the respective frameworks of four different international non-proliferation agreements be taken into account,

- adherence to the decisions of international organisations imposing constraints on trade with certain countries,
- that decisions taken in previous periods be appealed against; that applications for licences by domestic firms be filed with due account being taken of several moths needed for the process of licence-issuing to be completed; and that import certificates and end-user statements be correlated with export licences,
- that risk data bases, created both in reliance on in-house and domestic, as well as external information be consulted,
- that agreements with other countries banning re-exportation of imported goods and spare parts do definite countries be duly taken into account,
- that exchange of information gets off the ground between internal organisational units and the Ministry of Economy and interested government offices and agencies.

14. Control of the business community

The TRACKER system further makes possible building a data-base of companies which act in defiance of the law of the land or are in need of improving their knowledge thereof. Information stored in the system comes in handy when companies involved in external trade in strategic goods are being controlled.

The controllers, in particular, look into:

- a company's records for any inconsistency with its trading licence; they verify a transaction after its completion,
- the operation of an in-house control system,
- the way a company keeps its records of trade in strategic goods.

The Ministry of Economy is in charge of the said controls with experts from relevant government offices and agencies taking part.

In the event an irregularity is uncovered in his external trade in strategic goods, the Ministry of Economy summons the business owner responsible to re-embrace the rules within one month from the delivery of the summons. When this fails to produce the expected results, the Ministry of Economy revokes his licence by administrative decision.

In the case of a global and/or general licence, the Ministry of Economy issues an administrative decision forbidding a businessman to use the licence and advising of its decision the opinion-giving institutions.

The businessman stands a chance of being issued another licence but no sooner than in 3 years after the withdrawal of the former licence has become final.

15. Offences punishable with imprisonment and fines

Under the 29 November 2000 law on external trade in goods, technologies and services of strategic importance for the security of the state, and also for international peace and security:

- Whoever is involved in unlicenced export, import, transit or services associated therewith, or even unintentionally acts in contravention of the conditions laid down in his licence, is liable to a prison sentence of up to 10 years.
- If a perpetrator has unintentionally conducted trade in contravention of the conditions laid down in his licence, and has re-established his company's conformity with the law, he is liable to a fine, restriction of freedom or imprisonment of up to two years.
- If a sentence has been imposed for the aforesaid offences, the court can order confiscation of the strategic goods or other items used, or meant to be used in committing the offence, or

obtained through crime indirectly or directly, such as legal tenders and equities, even if these are not owned by the perpetrator.
- Whoever obstructs control of a company is liable to a fine.
- A business operator involved in trade without a valid licence is fined up to 20,000 zlotys by a trade control institution.
- A business operator who is involved in trade conducted in contravention of the conditions laid down in his licence is fined up to 100,000 zlotys by a trade control institution.

16. Summary

The aforesaid system of control of external trade in goods, technologies and services of strategic importance for the security of the state, and also for international peace and security went into effect on 1 January 2001 and is now in the initial phase of implementation.

Its effectiveness is contingent on full commitment thereto of all those involved in trade. Polish business owners must further understand that their submitting to control mechanisms and procedures, which add up to a control system consistent with international standards, is not tantamount to a surrender of any of their operating freedom, but can in fact turn out to be a *sui generis* privilege.

One can accept that by introducing a control system and imposing restrictions on deliveries of arms, military equipment, as well as goods and technologies which might be used by terrorist organisations for production of mass destruction weapons, Poland has joined the pursuit by the international community of a common policy to help safeguard international peace and security.

To fully understand the role being played by all those taking part in the control system, the Ministry of Economy has launched a series of training schemes for businessmen. These are being financed from foreign funds which, however, will stop being available in the near future.

The continuation of these and other actions assisting the inclusion of enterprise owners in the control system should be financed from the state budget.

The said training schemes should further be extended to cover university-level schools, research and development institutions and other centres representing advanced degrees of technological accomplishment, as these organisations have at their disposal what is known as "elusive technologies." The transfer of these strategically important technological assets very often takes place in the course of scientific seminars, conferences and training sessions, which is why a degree of self-control should be exercised in the conveyance of such knowledge.